

DECISION

11883 D. Linton Proc II
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-195192

DATE: November 1, 1979

MATTER OF: San Fernando Chemical

DLG 03219

DIGEST:

[Protest of IFB Cancellation]

IFB which contained erroneous small business size standard was properly canceled after bid opening for compelling reason.

San Fernando Chemical (San Fernando), protests the cancellation, after bid opening of invitation for bids (IFB) No. 9-PR-W-543-79/KE, issued by the General Services Administration (GSA) for absorbent material and sweeping compound. For the reasons that follow, the protest is denied.

The IFB was totally set aside for small business. Although the solicitation referenced the appropriate Standard Industrial Classification (SIC) (No. 2842), the corresponding Small Business Size Standard was erroneously stated as 50 employees. The correct size standard for this type of procurement is 500 employees. In view of this error, GSA decided to cancel the IFB and properly readvertise the procurement. San Fernando contends that the original IFB should not have been canceled.

Contracting officers have broad discretionary authority to reject all bids and cancel the invitation for bids. Keco Industries, Inc., B-191856, April 5, 1979, 79-1 CPD 234. However, because of the potential adverse impact on the competitive bidding system of canceling an invitation after bid prices have been exposed, contracting officers, in the exercise of their discretionary authority, must find that a "compelling reason" exists that warrants such cancellation. Federal Procurement Regulations (FPR)

~~007650~~

110740

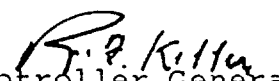
§ 1-2.404-1 (1964 ed., Circ. 1); ABC Demolition Corporation, B-192111, November 13, 1978, 78-2 CPD 339.

In the instant case, the contracting officer determined that the erroneous size standard presented a compelling reason to cancel the IFB. GSA believes that small business competition would have been prejudiced had the award been made under the original solicitation.

We agree. The record indicates that the Small Business Administration advised the GSA that any bidder with more than 50 employees could not have been considered a small business under this IFB and therefore would have been ineligible for award. In addition, San Fernando's contention that no possible prejudice could result from the erroneous size standard because no company which produces sweeping compound need employ more than 50 employees is clearly without merit, in light of the size of the three apparent low offerors. To the extent San Fernando is now protesting the size standard to be applied to this solicitation, the matter is not for our consideration. See FPR § 1-1.703.2(h) (1964 ed. amend. 192); Aydin Controls, B-191805, July 3, 1978, 78-2 CPD 3.

The agency's action in this case is consistent with our prior decisions which hold that a solicitation may be canceled after opening where an erroneous small business size standard is incorporated in the solicitation. See Evergreen Helicopters, Inc., B-183482, June 24, 1975, 75-1 CPD 382. Because the appropriate Standard Industrial Classification number was referenced, a supplier could have discerned that the number of employees for that standard was erroneously stated. However, we cannot assume that all potential bidders would detect that fact. In view of the possible adverse effect upon competition, we are unable to conclude that the cancellation was improper.

The protest is denied.


Acting Comptroller General
of the United States